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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Conditions of service for the ad litem judges of the International Tribunal for Rwanda

Report of the Secretary-General*

Summary

The Security Council, by its resolution 1431 (2002) of 14 August 2002, decided to establish a pool of ad litem judges in the International Tribunal for Rwanda. The Secretary-General is proposing to establish the conditions of service applicable to the ad litem judges of the International Tribunal for Rwanda based on the provisions of General Assembly resolution 56/285 of 27 June 2002, on the emoluments and other conditions of service of the members of the International Court of Justice and the judges of the International Tribunals for the Former Yugoslavia and for Rwanda as well as the ad litem judges of the International Tribunal for the Former Yugoslavia. The Secretary-General would thus propose that the conditions of service approved by the General Assembly for the ad litem judges of the International Tribunal for the Former Yugoslavia be applied to the ad litem judges of the International Tribunal for Rwanda.

* The present report was prepared pursuant to Security Council resolution 1431 (2002) of 14 August 2002, by which the Council established a pool of ad litem judges in the International Tribunal for Rwanda.

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I. Introduction

1. In his report to the General Assembly at its fifty-sixth session on the financing of the International Tribunal for Rwanda, the Secretary-General indicated that the use of ad litem judges to dispose of the Tribunal's caseload was to be the subject of a separate request to the Security Council and the General Assembly (A/56/497, para. 6).

2. The Security Council, acting under Chapter VII of the Charter of the United Nations, by its resolution 1431 (2002) of 14 August 2002, decided to establish a pool of ad litem judges in the International Tribunal for Rwanda, and to that end decided to amend articles 11, 12 and 13 of the Tribunal's Statute and also decided to amend articles 13 bis and 14 of the Statute of the International Tribunal for the Former Yugoslavia.

3. Under the new article 11 (Composition of the Chambers) of the Statute of the International Tribunal for Rwanda, the Chambers shall be composed of 16 permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of four ad litem independent judges appointed in accordance with new article 12 ter, paragraph 2, of the Statute, no two of whom may be nationals of the same State. The article also stipulates that three permanent judges and a maximum at any one time of four ad litem judges shall be members of each Trial Chamber. Each Trial Chamber to which ad litem judges are assigned may be divided into sections of three judges each, composed of both permanent and ad litem judges. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the Statute and shall render judgement in accordance with the same rules. The article further stipulates that seven of the permanent judges shall be members of the Appeals Chamber.

4. The revised article 13 (Officers and members of the Chambers) includes a provision to the effect that two of the permanent judges elected or appointed in accordance with article 12 bis of the Statute of the International Tribunal for Rwanda shall be assigned to be members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia and eight to the Trial Chambers of the International Tribunal for Rwanda. Under article 12 ter, after the Secretary-General has invited nominations for ad litem judges of the International Tribunal for Rwanda from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters and the Security Council has established a list of not less than 36 candidates, the General Assembly shall elect 18 ad litem judges of the International Tribunal for Rwanda for a term of four years. During their term, ad litem judges will be appointed by the Secretary-General, upon the request of the President of the International Tribunal for Rwanda, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years.

5. In paragraph 2 of resolution 1431 (2002), the Security Council requested the Secretary-General to make practical arrangements for the election as soon as possible of 18 ad litem judges in accordance with article 12 ter of the Statute of the International Tribunal for Rwanda and for the timely provision to the International Tribunal for Rwanda of personnel and facilities, in particular, for the ad litem judges and related offices of the Prosecutor, and further requested the Secretary-General to keep the Security Council closely informed of progress in that regard.

II. Background information on the adoption of the conditions of service for the judges of the International Tribunals and the ad litem judges of the International Tribunal for the Former Yugoslavia

6. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and adopted its Statute. Article 13, paragraph 4, of the Statute provides that the terms and conditions of service of judges shall be those of the judges of the International Court of Justice (ICJ). By its resolution 955 (1994) of 8 November 1994, the Council decided to establish the International Tribunal for Rwanda (ICTR) and adopted its Statute. Article 12, paragraph 5, of that Statute provides that the terms and conditions of service of judges shall be those of the judges of the International Tribunal for the Former Yugoslavia (ICTY).

7. In his report to the General Assembly at its fifty-sixth session on the financing of the International Tribunal for the Former Yugoslavia (A/55/517), the Secretary-General indicated that, since its inception, the Tribunal had undergone rapid and continuous expansion, Accordingly, it was proposed to expand the trial capacity of the Tribunal by introducing the use of ad litem judges, as part of the medium- and longer-term measures designed to improve the operations of the Tribunal. The proposals were based on the study on the operations of the Tribunal, submitted as part of the report on the same topic (see A/55/382-S/2000/865).

8. The Security Council, acting under Chapter VII of the Charter of the United Nations, by its resolution 1329 (2000) of 30 November 2000, decided to establish a pool of ad litem judges in ICTY and to enlarge the membership of the Appeals Chambers of both ICTY and ICTR. The Council also decided to amend articles 12, 13, and 14 of the Statute of ICTY and articles 11, 12 and 13 of the Statute of ICTR. At that time, however, the ICTR Statute was not amended to include a provision for the utilization of ad litem judges.

9. The General Assembly, in its resolution 55/225 A of 23 December 2000, took note of Security Council resolution 1329 (2000) concerning the establishment of a pool of ad litem judges in ICTY and decided to revert, at its resumed fifty-fifth session, to the consideration of resources requirements for the implementation of modifications to the ICTY Statute, without prejudice to the nomination and election of the ad litem judges.

10. Further to General Assembly resolution 55/225, with respect to the statement of the Chairman of the Advisory Committee on Administrative and Budgetary Questions regarding the conditions of service of the ad litem judges (see A/C.5/55/SR.35, para. 4), the Secretary-General submitted his report (A/55/756) on the conditions of service of the ad litem judges of ICTY.

11. Paragraph 1 (a) of article 13 quater of the ICTY Statute specifies that, during the period in which they are appointed to serve in the Tribunal, ad litem judges shall benefit from the same terms and conditions of service, mutatis mutandis, as the permanent judges of the Tribunal. However, ad litem judges would be entitled to receive benefits only once they have been appointed to serve on one or more trials

and, if they are so appointed, they would be so entitled only for as long as and in respect of the period that they are so appointed.

12. Accordingly, the Secretary-General proposed that the conditions of service approved by the General Assembly for the judges of the International Tribunals by its resolution 53/214 of 18 December 1998 and the travel and subsistence regulations for the judges of the International Tribunals contained in annex III to his report to the General Assembly at its fifty-second session (A/52/520) should be applied to the ad litem judges of the International Tribunal for the Former Yugoslavia.

13. The Secretary-General thus proposed the following conditions of service to be applicable to ad litem judges of the International Tribunal for the Former Yugoslavia:

(a) *Emoluments*. With regard to emoluments:

(i) Ad litem judges should receive an annual salary of US$ 160,000, prorated for length of service;

(ii) The floor/ceiling measures that were applicable to the members of the International Court of Justice and judges of the International Tribunal for the Former Yugoslavia should also apply to the emoluments of ad litem judges serving at The Hague;

(b) *Travel costs and subsistence benefits*. Ad litem judges should be entitled to payment of travel expenses and subsistence benefits as set forth in the travel and subsistence regulations for judges of the International Tribunal for the Former Yugoslavia and the judges of the International Tribunal for Rwanda contained in annex III to document A/52/520;

(c) *Education allowance*. Ad litem judges should be entitled to education allowance in accordance with the provisions contained in section II of General Assembly resolution 53/209 of 18 December 1998;

(d) *Survivors' lump sum benefit*. In paragraph 7 of its resolution 54/240 of 23 December 1999, the General Assembly had approved the recommendations of the Advisory Committee on the note of the Secretary-General (A/C.5/54/30) on conditions of service for the judges of the International Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia concerning the establishment of a lump-sum payment for survivors of the judges. Accordingly, in the event of the death of judges of the International Tribunals, survivors would be compensated in the form of a lump-sum payment equivalent to one month of base salary for each year of service, subject to a minimum of one month and a maximum of four months. In the case of ad litem judges, the Secretary-General would propose that, in the event of the death of an ad litem judge, survivors would be compensated in the form of a lump-sum payment equivalent to one month of base salary for each year of service, subject to a minimum of one month and a maximum of three months;

(e) *General conditions*. The following general conditions should apply to ad litem judges: ad litem judges might not exercise any political or administrative function, or engage in any other occupation of a professional nature, during their term of appointment in office. The entitlements and allowances listed above should be conditional on the residence of the ad litem judge at The Hague;

(f) *Medical insurance*. Ad litem judges, for the duration of their appointment, might participate in the medical insurance plan appropriate to their duty station under the same conditions applicable to the judges of the International Tribunals (A/55/756, para. 20).

14. The Secretary-General further recommended that ad litem judges of ICTY not be entitled to pension benefits. A judge who had retired from ICTY, ICTR or ICJ and was the recipient of a pension therefrom would not continue to receive that pension during the time he or she served as an ad litem judge.

15. Any period of service as an ad litem judge of the International Tribunal for the Former Yugoslavia would not be counted towards and added for years of qualifying service that a judge might have with either of the two International Tribunals or the International Court for pension purposes.

16. With regard to the establishment of disability benefits for ad litem judges of the International Tribunal for the Former Yugoslavia, it was recognized by the Organization that there was a need to take care of disability payment in respect of a service period. Therefore, the Secretary-General proposed that should an ad litem judge of the Tribunal be found unable to perform his or her duties because of ill-health or disability, he or she would be entitled to receive payment of his or her salary for the service period. There would be no liability beyond that period.

17. By virtue of the limitation on their length of appointment and taking into account the conditions applied to the permanent judges, ad litem judges of the International Tribunal for the Former Yugoslavia would not be eligible for payment of relocation allowance.

18. In section VIII, paragraph 7, of its resolution 53/214 of 18 December 1998, the General Assembly decided that the emoluments, pensions and other conditions of service for the members of the International Court of Justice, the judges of the International Tribunal for the Former Yugoslavia and the judges of the International Tribunal for Rwanda should be reviewed at the fifty-sixth session of the Assembly. In the event that adjustments in the conditions of service and compensation for the members of the International Court of Justice and for the judges of the International Tribunals are proposed, such adjustments would also be applied, where appropriate, to ad litem judges of the International Tribunal for the Former Yugoslavia.

19. In his report to the General Assembly at its fifty-fifth session (A/55/756), the Secretary-General requested the Assembly to consider approval of the conditions of service for ad litem judges of the International Tribunal for the Former Yugoslavia which he had proposed in paragraphs 18 to 25 of the report.

20. The Advisory Committee, in paragraph 7 of its report (A/55/806), drew attention to the fact that, whereas judges of the International Court of Justice were elected for a term of nine years and might be re-elected, and judges of the Tribunals were elected for a term of four years and might be re-elected, the service of the ad litem judges was of a much more temporary nature and could be intermittent. This essential difference had been taken into account by the Committee in evaluating the necessity of a number of the entitlements and allowances proposed in the report of the Secretary-General.

21. Accordingly, the Advisory Committee agreed with the Secretary-General's proposals concerning the annual salary of $160,000, prorated for length of service

and with application of the floor-ceiling measures, the proposal to extend the travel and subsistence regulations in effect for the judges, and with the proposal to provide disability benefits limited to injury or illness attributable to service with ICTY.

22. The General Assembly, in its resolution 55/249 of 12 April 2001, endorsed the observations and recommendations of the Advisory Committee contained in its report (ibid., paras. 7-15) on the emoluments, travel and subsistence regulations and disability payments for the ad litem judges of the International Tribunal for the Former Yugoslavia.

23. In his comprehensive report to the General Assembly at its fifty-sixth session on the conditions of service and compensation for other than Secretariat officials: members of the International Court of Justice, judges of the International Tribunal for the Former Yugoslavia, judges of the International Tribunal for Rwanda and ad litem judges of the International Tribunal for the Former Yugoslavia (A/C.5/56/14), the Secretary-General submitted his review and recommendations relating to the remuneration and other conditions of service for the members of the International Court of Justice, and corresponding recommendations with respect to the remuneration and other conditions of service of the judges of the International Tribunals and the ad litem judges of the International Tribunal for the Former Yugoslavia.

24. In paragraph 1 of its resolution 56/285 of 27 June 2002, the General Assembly endorsed the observations and recommendations of the Advisory Committee contained in its report (A/56/7/Add.2) with regard to the emoluments, the special allowance of the President and for the Vice-President when acting as President, the education grant, pensions and other conditions of service of the members of the International Court of Justice, the judges of the International Tribunal for the Former Yugoslavia, the judges of the International Tribunal for Rwanda and the ad litem judges of the International Tribunal for the Former Yugoslavia, without prejudice to the existing rules governing the conditions of service of the judges of the Tribunals.

III. Adoption of changes to the Statute of the International Tribunal for Rwanda

25. Under article 12 ter of the Statute of the International Tribunal for Rwanda, ad litem judges shall be elected for a term of four years and that they shall not be eligible for re-election (para. 1 (e)). During their term, ad litem judges will be appointed by the Secretary-General, upon request of the President of the Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years (para. 2).

26. Paragraph 1 (a) of article 12 quater of the Statute specifies that during the period in which they are appointed to serve in the International Tribunal, ad litem judges shall benefit from the same terms and conditions of service, mutatis mutandis, as the permanent judges of the International Tribunal for Rwanda. However, ad litem judges would be entitled to receive benefits only once they had been appointed to serve on one or more trials and, if they were so appointed, they would be so entitled only for as long as and in respect of the period that they were so appointed.

27. As noted above, the General Assembly, in its resolution 55/285, had endorsed the recommendations of the Advisory Committee vis-à-vis the emoluments and other conditions of service of the members of the International Court and the judges of the International Tribunals as well as the ad litem judges of ICTY. The Secretary-General would thus propose that the conditions of service approved by the General Assembly for the ad litem judges of ICTY be applied to the ad litem judges of ICTR.

28. Accordingly, the Secretary-General would propose that the following conditions of service shall be applicable to ad litem judges of the International Tribunal for Rwanda:

(a) *Emoluments.* With regard to emoluments, ad litem judges of the International Tribunal for Rwanda shall receive an annual salary of $160,000, prorated for length of service;

(b) *Travel costs and subsistence benefits.* Ad litem judges of the International Tribunal for Rwanda shall be entitled to payment of travel expenses and subsistence benefits as set forth in the travel and subsistence regulations for judges of the International Tribunal for the Former Yugoslavia and the judges of the International Tribunal for Rwanda contained in annex III to document A/52/520 and as revised by the General Assembly in its resolution 56/285 of 27 June 2002.

29. Ad litem judges of the International Tribunal for Rwanda shall not be entitled to pension benefits. A judge who has retired from the International Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda or the International Court of Justice and is the recipient of a pension therefrom would not continue to receive that pension during the time he or she serves as an ad litem judge.

30. Any period of service as an ad litem judge of the International Tribunal for Rwanda would not be counted towards and added for years of qualifying service that a judge might have with the International Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda or the International Court of Justice for pension purposes.

31. Concerning the establishment of disability benefits for ad litem judges of the International Tribunal for Rwanda, it is recognized by the Organization that there is a need to take care of disability payment in respect of a service period. Therefore, should an ad litem judge be found unable to perform his or her duties because of ill-health or disability, he or she would be entitled to receive payment of his or her salary for the service period. There would be no liability beyond that period. The Advisory Committee recommended and the General Assembly agreed that disability payments would be limited to injury or illness attributable to service with the Tribunal.

32. By virtue of the limitation on their length of appointment and taking into account the conditions applied to the permanent judges, ad litem judges of the International Tribunal for Rwanda would not be eligible for payment of relocation allowance.

33. In paragraph 2 of its resolution 56/285, the General Assembly decided that the conditions of service and remuneration for the members of the

International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia, the judges of the International Tribunal for Rwanda and the ad litem judges of the International Tribunal for the Former Yugoslavia should next be reviewed at the fifty-ninth session of the Assembly. In the event that adjustments in the conditions of service and compensation for the members of the International Court of Justice and for the judges of the International Tribunals are proposed, such adjustments would also be applied, where appropriate, to ad litem judges of both the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda.

IV. Conclusions and recommendations

34. The General Assembly may wish to approve the conditions of service for ad litem judges of the International Tribunal for Rwanda as proposed in paragraphs 28 to 33 above.